the use of the streets, which the company had accepted. *Held*, that *mandamus* does not lie. *City of Chicago* v. *Chicago Telephone Co.*, 82 N. E. 607 (Ill.).

Though ordinary contractual duties, even if owed to a state, are not enforceable by *mandamus*, duties imposed by municipal ordinances in granting to quasi-public corporations the use of streets are not contractual merely. *People* v. *Suburban R. R. Co.*, 178 Ill. 594. For, whether the grant is properly considered a franchise given by the municipality under authority delegated by the state, or, as in Illinois, a license sanctioned by the state, the duties are imposed as conditions of the grant of a public privilege and are legal obligations owed ultimately to the state. *Richmond, etc., Co.* v. *Brown*, 97 Va. 26; *Chicago, etc., Co.* v. *Town of Lake*, 130 Ill. 42. If, then, a relator seeks to enforce these duties by *mandamus*, the writ should be granted. *Richmond, etc., Co.* v. *Brown, supra*. For, even according to the early definition of *mandamus*, it lay for the enforcement of legal obligations imposed by statute or charter. *King* v. *Wheeler*, Cas. t. Hardw. 99. And the application of *mandamus* has been greatly extended. *Rex v. Barker*, 3 Burr. 1265; *American, etc., Co.* v. *Haven*, 101 Mass. 398. According to the modern notions, benefit to the general public from performance, it is submitted, is a circumstance in showing that obligations are enforceable by *mandamus*. But the present case reaches its erroneous conclusion by making such benefit the determining circumstance.

NEGLIGENT MISREPRESENTATION — NEGLIGENTLY PREPARED ABSTRACT OF TITLE. — The plaintiff alleged that the defendant company was engaged in making abstracts of title to realty; that it was customary for purchasers of realty, even though under no contract relation with the defendant, to rely thereon; and that the plaintiff was damaged by acting on a negligently defective abstract made by the defendant. The defendant demurred. *Held*, that the demurrer be sustained. *Thomas* v. *Guarantee Title & Trust Co.*, Oh., Circ. Ct. Cuyahoga Co., Nov. 18, 1907. See NOTES, p. 439.

NEW TRIAL — GROUNDS FOR GRANTING NEW TRIAL — MOTION ON GROUND OF NEWLY DISCOVERED EVIDENCE UNACCOMPANIED BY AFFIDAVIT OF WITNESS. — On a motion for a new trial on grounds of newly discovered evidence the applicant produced the affidavit of a person other than the witness as to statements made by a non-resident witness who had refused to make an affidavit. *Held*, that it is error to refuse to consider it. *Soebel* v. *Boston Elevated Ry. Co.*, 83 N. E. 3 (Mass.).

As the question involved is not the truth of certain evidence but its existence, and as no question of what should or should not be admitted at the trial is involved, the ordinary hearsay rule does not here apply. *Lansky* v. *West End St. Ry. Co.*, 173 Mass. 20; *contra*, *Sheppard* v. *Sheppard*, 10 N. J. L. 250, 254. In general, the facts upon which the motion is based must be shown by the best evidence. Therefore the affidavit of the witness from whom the newly found evidence is expected must ordinarily accompany the motion. *Cardell* v. *Lawton*, 16 Vt. 606. But the rule is subject to exceptions within the discretion of the court. And if the absence of such an affidavit can be satisfactorily accounted for, as where the witness is out of the state, and his affidavit cannot be obtained, any evidence that will convince the court that he can give important new testimony may be shown. *Smith* v. *Cushing*, 18 Wis. 295; *Read* v. *Staton*, 3 Hayw. (Tenn.) 159. Under these circumstances hearsay is admissible, and the affidavit of one who has heard the statements of the witness may be received. *Eddy* v. *Caldwell*, 7 Minn. 225.

PUBLIC OFFICERS — DE FACTO OFFICERS — VALIDITY OF ACTS WHERE NO DE JURE OFFICE. — The plaintiff was discharged from the police force by a police board created by a statute later declared unconstitutional. He now seeks reinstatement on the ground that the acts of its incumbents could not be valid as those of *de facto* officers, since there was no *de jure* board. *Held*, that he is not entitled to reinstatement. *Lang* v. *Mayor of Bayonne*, 68 Atl. 90 (N. J., Ct. Err. and App.).

This case overrules an earlier case. *Flaucher* v. *Camden*, 56 N. J. L. 244. Further, it disapproves of the doctrine laid down by the Supreme Court of the United States. *Norton* v. *Shelby County*, 118 U. S. 425. For a discussion of the principles involved, see 21 HARV. L. REV. 153; 20 *ibid.* 580.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — LIABILITY OF LABOR UNIONS. — The plaintiffs ran a non-union factory. The defendants, members of the Union Hatters of America and the American Federation of Labor, in an attempt to force the plaintiff to employ only union men, boycotted his goods and destroyed his business, which was largely interstate. *Held*, that the defendants' acts constitute a combination in restraint of interstate trade, made illegal by the Sherman Anti-Trust Act of 1890, and that the plaintiff, by § 7 of the Act, can recover threefold damages for the injury to his business. *Loewe* v. *Lawlor*, 208 U. S. 274.

By the better opinion boycotts are actionable at common law. See 20 HARV. L. REV. 429, 450. The present case is noteworthy in deciding for the first time that the person injured by a boycott which is in restraint of interstate commerce has the added remedy of a recovery of threefold damages. The court has already decided that a conspiracy in trade to refuse to sell to a retailer unless he conforms with certain restrictions is an illegal restraint under the Act. *Montague & Co.* v. *Lowry*, 193 U. S. 38. The present decision merely applies the same principles to labor combinations. It therefore introduces no new principles, and the court could consistently have reached no other result without exempting labor unions from the law. And a combination of consumers to interfere with the interstate trade of any producer would likewise seem illegal, regardless of the motive. As the decision allows recovery against the individual members of the union, it seems to show the attitude of the court upon the question of the responsibility of individual members of a labor union for damages caused by strikes and other labor troubles.

RESTRICTIVE AGREEMENTS AS TO USE OF PROPERTY — COVENANT AGAINST EXERCISING TRADE — COVENANT TAKEN FOR PURPOSE OF ESTABLISHING MONOPOLY. — The owner of a large tract of land on which a town was situated divided it into lots and conveyed them to different purchasers by deeds containing covenants by the vendees not to engage in the sale of intoxicating liquors. His main purpose was to protect his own saloon from competitors. *Held*, that the covenants are void as creating a monopoly. *Burdell* v. *Grandi*, 92 Pac. 1022 (Cal.).

It is well settled that a covenant not to carry on a certain business on the land sold is enforceable. *McMahon* v. *Williams*, 79 Ala. 288. But where it is part of a general scheme to create a monopoly, a distinct question of public policy is presented. The older view was that an owner of land had an absolute right to dispose of it in any way. *Holmes* v. *Martin*, 10 Ga. 503; *Morris* v. *Tuskaloosa Mfg. Co.*, 83 Ala. 565. The modern rule is that he must not exercise his right so as to injure the public, and that if restrictive covenants create a monopoly they are void. *Chippewa Lumber Co.* v. *Tremper*, 75 Mich. 36. The result of enforcing the covenants in the present case would be to confine the whole town's source of supply of liquor to one man. In the case of most commodities the restriction should not be enforced. But it seems better public policy to restrict the sale of liquor than to encourage its use, and as the question is one of public policy only, the monopoly might well be allowed. See *Watrous* v. *Allen*, 57 Mich. 362.

TAXATION — PARTICULAR FORMS OF TAXATION — TIME OF ACCRUAL OF RIGHT OF STATE TO INHERITANCE TAX. — A resident of Massachusetts died intestate leaving personal property in both Massachusetts and New York to be distributed to a brother and certain nephews and nieces. Under a New York statute the shares of the nephews and nieces were subject to an inheritance tax, while the brother's share was exempt. To avoid the tax on the non-exempt shares the administrator elected to apply the New York assets to the payment of the brother's distributive share. *Held*, that he is liable for the tax, since the